

**42 IAC 1-5-6 Conflicts of interest; decisions and voting (IC 4-2-6-9)**

INDOT's Chief of Staff has signature authority over all local public agency ("LPA") and state-funded contracts and also serves on the agency's Selection Review Committee to assist in the selection of consultants seeking professional service contracts. The Chief of Staff began employment negotiations with an engineering and architectural consulting firm that INDOT does business with regularly. SEC found that the screening procedure proposed by INDOT—which would remove the Chief of Staff from Selection Review Committee meetings, eliminate his signatory authority over LPA and state-funded consultant contracts, and refer all matters involving the consulting firm to the Deputy Commissioner—was appropriate to avoid any conflicts of interest.

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The Indiana State Ethics Commission ("Commission") issues the following advisory opinion concerning the State Code of Ethics ("Code") pursuant to I.C. 4-2-6-4(b)(1). The following opinion is based exclusively on sworn testimony and documents presented by the requestor.

**BACKGROUND**

A state employee is the Chief of Staff for the Indiana Department of Transportation ("INDOT"). He has served in this capacity since 2012. The Chief of Staff has recently become aware of a potential job opportunity at an engineering and architectural consulting firm. The firm is a consulting firm that INDOT does business with regularly. On June 23, 2014, the Chief of Staff began employment discussions with the consulting firm. On June 24, 2014, he notified the INDOT's Commissioner, of the potential conflict of interest. He is currently in negotiations with the consulting firm for potential employment as its Vice President of Transportation.

In his capacity as INDOT's Chief of Staff, the state employee is a member of the Executive Staff and is responsible for leading Communications, Media, Economic Development Activities, and Legislative Affairs. He is also responsible for administration and oversight of all customer service, both internal and external, Division of Innovation and Enhancement, Contract Administration, the LPA and MPO programs, and the oversight and planning in the Multi-Model Division which consists of air, rail, transit, and freight. He also has signature authority over all local public agency and state-funded contracts.

As Chief of Staff, the state employee also sits on the Selection Review Committee. INDOT follows a strict qualification-based process involving the participation of several individuals when selecting a consultant for a professional services contract. The process is outlined in chapter two of INDOT's Professional Services Contract Administration manual ("Manual"). In short, INDOT advertises requests for proposals ("RFPs") and receives letters of interest from interested consultants in response to the RFPs. Once INDOT receives a letter of interest, three to five scorers score the letters. The INDOT selection review committee, which is made up of four individuals, reviews the scores and determines the selection rankings. INDOT's Commissioner then has an opportunity to approve the recommended selection ranking, to ask for clarification/additional information, or to eliminate the ranked firms with written explanation.

On more complex projects, INDOT may add a second step to the selection process as outlined in section 2.5.1 of the Manual. In this step, the project manager from each of the top three ranked firms presents their project approach to a three to five member evaluation committee. The members of the evaluation committee do not include any of the original scorers. After interviews with the teams are conducted, the evaluation team independently scores the interviewed teams. The scores are given to the selection review committee to make a final selection recommendation to the Commissioner or his designee.

Based on his job duties with INDOT, there is the potential that issues may arise regarding INDOT and the consulting firm while the Chief of Staff is still employed by the agency. INDOT proposes the implementation of the following screening procedure to avoid any potential conflict of interest should the consulting firm be identified as a potential consultant or any other issues in which he, by virtue of his employment negotiations with the consulting firm, or the consulting firm would have a financial interest:

1. The Chief of Staff will not attend Selection Review Committee meetings until negotiations are complete and a formal decision is made about his potential employment with the consulting firm;
2. INDOT's Deputy Commissioner, will sign all consultant contracts for LPA and state-funded programs until the Chief of Staff's employment negotiations have concluded with the consulting firm;
3. The Chief of Staff will immediately refer any matter(s) involving the consulting firm that may come to him to the Commissioner, the Deputy Commissioner, and INDOT's General Counsel. He will also copy INDOT's Ethics Officer, on those matter(s);
4. The Deputy Commissioner will be solely responsible for handling any issue(s) referred to him, including any communications and necessary decision making associated with the issue(s) and potential reassignment. The Deputy Commissioner will handle all communications through his chain of command; and
5. The Ethics Officer will continue to monitor the process to ensure the integrity of the screening procedure.

### **ISSUE**

Would a conflict of interest arise for the Chief of Staff if he participates in decision(s) and/or vote(s) in which either he and/or the consulting firm has a financial interest since employment negotiations have commenced with the consulting firm?

### **RELEVANT LAW**

#### **I.C. 4-2-6-9**

##### **Conflict of economic interests**

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state

appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

### ANALYSIS

I.C. 4-2-6-9 (a)(1) prohibits the Chief of Staff from participating in any decision or vote if he has a financial interest in the outcome of the matter. Similarly, I.C. 4-2-6-9(a)(4) prohibits the Chief of Staff from participating in any decision or vote in which a person or organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of financial interest in I.C. 4-2-6-1(a)(11) includes, “an interest arising from employment or prospective employment for which negotiations have begun.”

In Advisory Opinion 10-I-7, the Commission determined that employment negotiations commence once an employer contacts a state employee to discuss potential employment. The Chief of Staff indicates that he began employment negotiations with the consulting firm on June 23, 2014. Since employment negotiations have commenced, a conflict of interest would arise for the Chief of Staff if he participates in a decision or vote in which either he, by virtue of his ongoing employment negotiations with the consulting firm, or the consulting firm would have a financial interest.

I.C. 4-2-6-9(b) provides that a state employee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the Commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. In this case, the Chief of Staff requested an advisory opinion from the Commission as provided in the rule and has disclosed the potential conflict to his appointing authority.

I.C. 4-2-6-9(b)(1) further provides that when a potential conflict of interest arises, the Commission may, with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state employee seeking an advisory opinion from involvement in the matter. In this case, INDOT proposes the implementation of the following screening procedure:

1. The Chief of Staff will not attend Selection Review Committee meetings until negotiations are complete and a formal decision is made about his potential employment with the consulting firm;
2. The Deputy Commissioner, will sign all consultant contracts for LPA and state-funded programs until the Chief of Staff's employment negotiations have concluded with the consulting firm;
3. The Chief of Staff will immediately refer any matter(s) involving the consulting firm that may come to him to the Commissioner, the Deputy Commissioner, and the General Counsel. He will also copy INDOT's Ethics Officer, on those matter(s);
4. The Deputy Commissioner will be solely responsible for handling any issue(s) referred to him, including any communications and necessary decision making associated with the issue(s) and potential reassignment. The Deputy Commissioner will handle all communications through his chain of command; and
5. The Ethics Officer will continue to monitor the process to ensure the integrity of the screening procedure.

While it appears that the proposed procedure would prevent the Chief of Staff's participation or vote in matters related directly with the consulting firm, it must be emphasized that he should be screened from any decision or vote in which he or the consulting firm would have a financial interest regardless of whether it involves him or the company directly. In addition, the screen must remain in place until the employment negotiations conclude or for the remainder of the Chief of Staff's employment until his departure if a job offer is extended and accepted.

### **CONCLUSION**

The Commission finds that a potential conflict of interest would arise for the Chief of Staff under I.C. 4-2-6-9 if he participates in any decision or vote in which either he or for the consulting firm would have a financial interest in the outcome of the matter because employment negotiations have commenced. Moreover, it is the Commission's opinion that the screening mechanism proposed by INDOT is appropriate. The Commission, however, emphasizes that this opinion is narrowly tailored to address potential conflicts of interests; it is not intended to provide approval for any post-employment opportunities that may arise for the Chief of Staff.